IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.256 OF 2000

1. Special Land Acquisition Officer
(South Goa) Konkan Railway
Corporation Limited,
Amey Guest House,
Davorlim Road,
P.O. Navelim,
Salcete Goa, 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawnfond,
near Margao Railway Station,
Margao Goa. ... Appellants.

V/s

1. Sadashiv Shankar Gaonkar
alias Sashiv Dessai, (deceased)
represented by Akalpita Raut Dessai
R/o Palolem, Canacona, Goa. ... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for the respondent.

CORAM: A.P. LAVANDE, J.

DATE: 20TH APRIL, 2005.

ORAL JUDGMENT

The appellants challenge the judgment and award dated 25.8.2000 passed by the Additional District Judge, South Goa, Margao in Land Acquisition No.212/95.

2. By Notification dated 24.7.1991 issued under Section 4 of the Land Acquisition Act (the Act for short) the Government acquired for Konkan Railway Corporation Ltd. large chunks of land situated at Nagarcem, Palolem at Canacona. The property bearing survey no.195/1 admeasuring 2500 square meters belonging to the respondent Sadashiv Gaonkar, the original applicant before the reference Court, was part of the acquired land. The said land was paddy field. The Special Land Acquisition Officer by his award dated 9.12.1993 awarded Rs.9/- for the acquired land. Aggrieved by the said award, the original applicant sought reference under Section 18 of the Land Acquisition Act and claimed compensation of Rs.100/- per square meter. The reference Court relied upon the Sale Deed dated 19.1.987 (Exhibit AW1/A) by which one Rosalina Rodrigues had purchased the paddy field admeasuring 1455 square meters for Rs.43,650/- i.e. at the rate of Rs.30/- per square meter. The reference Court held that the land purchased by said Rosalina Rodrigues which was a paddy field was comparable with the acquired land and therefore fixed the compensation in respect of the acquired land at Rs.31.50 per square meter by first giving 10% increase every year and thereafter deducting 25% in view of

the fact that the land purchased by said Rosalina Rodrigues had advantages in as much as the same was bounded on one side by the National Highway and the other side by Panchayat road, which advantage was not there in respect of the acquired land.

3. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court ought not to have relied upon the Sale Deed dated 19.1.1987 (Exhibit AW1/A) since the land involved in the said Sale Deed was not comparable to the acquired land. The learned Counsel further submitted that in any event, the reference Court committed an error by first giving increase of 10% per year and thereafter deducting 25%. According to learned Counsel the reference Court ought to have first deducted of 25% in view of the advantages which the land of Rosalina Rodrigues had. The learned Counsel further submitted that the acquired land being paddy field, the reference Court could not have granted increase of 10% every year, more particularly in absence of evidence of any development around the acquired land preceding the acquisition. The learned Counsel further submitted that this Court in a number of appeals has given increase of 5% in respect of paddy fields and therefore increase of 10% per year granted by the

reference Court cannot be sustained.

4. Per contra, Mr. Kamat, learned Counsel appearing for the respondent submitted that the reference Court was absolutely justified in placing reliance on the Sale Deed dated 19.1.1987 (Exhibit AW1/A) by which Rosalina Rodrigues had purchased the plot at the rate of Rs.30/- per square. According to learned Counsel the plot purchased by Rosalina Rodrigues was similar to the acquired land and was bearing the same survey number and therefore reliance placed by the reference Court on the said Sale Deed is justified. According to the learned Counsel the reference Court was absolutely justified in awarding Rs.31.50 per square meter in respect of the acquired land.

5. I have considered the submissions made by the learned Counsel for the parties. Since the Sale Deed dated 19.1.1987 (Exhibit AW1/A) was in respect of land bearing the same survey number and of the same nature i.e. paddy field, I am of the opinion that the reference Court was justified in placing reliance upon the said Sale Deed dated 19.1.1987 (Exhibit AW1/A). However, I am in agreement with the submission made by Mr. Afonso that the reference Court ought to have first deducted

25% from the consideration mentioned in the said Sale Deed in view of the advantage which the land purchased by Rosalina Rodrigues had. So far as deduction of 25% from the consideration mentioned in the said sale deed, I am of the opinion that the reference Court was justified in deducting 25%. Therefore by deducting 25% from the consideration mentioned in the said Sale Deed, the value of the acquired land as on 19.1.1987 comes to Rs.22.50. In so far as increase of 10% granted by the reference Court is concerned, I have already held in several connected matters arising under the same notification that having regard to the fact that the acquired land is a paddy field situated at Nagarcem, Palolem, the annual increase must be 5% and not 10%. For the same reasons, I hold that increase of 5% and not 10% per year has to be considered in fixing the market rate of the acquired land. Considering the fact that the notification under Section 4 was issued after about four years of the said execution of the Sale Deed dated 19.1.1987 (Exhibit AW1/A), the total increase works out to 20%. Accordingly the compensation payable in respect of the acquired land as on the date of the publication under Section 4 of the Notification comes to Rs.27/- per square meter. Accordingly I hold that the compensation payable in respect of the acquired land is Rs.27/-

per square meter. Needless to mention that the respondent is entitled to all the statutory benefits under the Act.

6. In view of the above discussion, the appeal is partly allowed. The compensation payable in respect of the acquired land is fixed at Rs.27/- per square meter. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

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